

SERVICE DATE - APRIL 3, 2001

SURFACE TRANSPORTATION BOARD

DECISION AND NOTICE OF INTERIM TRAIL USE OR ABANDONMENT

STB Docket No. AB-491 (Sub-No. 1X)

R.J. CORMAN RAILROAD COMPANY/PENNSYLVANIA LINES, INC.—ABANDONMENT
EXEMPTION—IN CLEARFIELD AND CENTRE COUNTIES, PA

Decided: April 2, 2001

By petition filed on December 14, 2000,¹ R.J. Corman Railroad Company/Pennsylvania Lines, Inc. (RJCP), seeks an exemption under 49 U.S.C. 10502 from the prior approval requirements of 49 U.S.C. 10903 to abandon approximately 22.7 miles consisting of 6 segments of its Wallaceton Branch in Clearfield and Centre Counties, PA.² The Pennsylvania Department of Conservation & Natural Resources (DCNR) and The Conservation Fund (Fund) (collectively, DCNR/Fund) jointly request a public use condition and issuance of a notice of interim trail use (NITU) under the National Trails System Act, 16 U.S.C. 1247(d) (Trails Act). The Clearfield County Rails to Trails Association (CCRTA) also submitted a request for a public use condition and for issuance of a NITU. We will grant the exemption, subject to trail use, public use, environmental, and standard employee protective conditions.

BACKGROUND

RJCP became a Class III rail carrier in December 1995, when it acquired approximately 230 miles of rail lines in central Pennsylvania, including the subject rail line segments.³ The line

¹ Notice of the filing was served and published in the Federal Register on January 3, 2001 (66 FR 393-94).

² The segments of the Wallaceton Branch proposed for abandonment are: (1) the Wallaceton Secondary, between approximately milepost 9.2, near Bigler, and approximately milepost 11.7, near Wallaceton; (2) the Mills Industrial Track, between approximately milepost 11.2, near Wallaceton, and approximately milepost 24.5, near Osceola Mills; (3) the Bigler Industrial Track, between approximately mileposts 31.4 and 31.8; (4) the Moshannon-Clearfield Industrial Track, between approximately mileposts 0.0 and 4.0; (5) the Trout Run Branch, between approximately mileposts 0.0 and 2.2; and (6) the Big Run Branch, between approximately mileposts 0.0 and 0.3.

³ See R.J. Corman Railroad Company/Pennsylvania Lines, Inc.—Acquisition and Operation Exemption—Lines of Consolidated Rail Corporation, Finance Docket No. 32838 (STB served Jan. 26, 1996).

segments have not handled any local traffic since September 1999.⁴ Previously, RJCP served two shippers: Power Operating and Douglas Explosives. Power Operating shipped 6,606 carloads of coal in 1997, 4,849 carloads in 1998, and 1,765 carloads in 1999, before ceasing coal mining operations. RJCP states that Power Operating has permanently closed its mine. Douglas Explosives received 64 carloads of chemicals in 1997, 22 carloads in 1998, and 7 carloads in 1999. RJCP states that Douglas Explosives has been acquired by new owners who have not indicated an intent to use rail service. After abandonment of the line segments, RJCP intends to salvage the rail and other track material.⁵

DISCUSSION AND CONCLUSIONS

Under 49 U.S.C. 10903, a rail line may not be abandoned without our prior approval. Under 49 U.S.C. 10502, however, we must exempt a transaction or service from regulation when we find that: (1) continued regulation is not necessary to carry out the rail transportation policy of 49 U.S.C. 10101; and (2) either (a) the transaction or service is of limited scope, or (b) regulation is not necessary to protect shippers from the abuse of market power.

Detailed scrutiny under 49 U.S.C. 10903 is not necessary to carry out the rail transportation policy. By minimizing the administrative expense of the application process, an exemption will reduce regulatory barriers to exit [49 U.S.C. 10101(7)]. An exemption will also foster sound economic conditions and encourage efficient management by relieving RJCP of the cost of owning and maintaining the line segments and allowing it to use its assets more productively [49 U.S.C. 10101(5) and (9)]. Other aspects of the rail transportation policy will not be affected adversely.

Regulation of the proposed transaction is not necessary to protect shippers from an abuse of market power. No local traffic has moved over the line segments in over a year and no future traffic is anticipated. The two shippers formerly served by the Wallaceton Branch have not indicated opposition to the abandonment. Nevertheless, to ensure that these shippers are informed of our decision, we will require RJCP to serve a copy of this decision on them within 5 days of the service date and certify to us that it has done so. Given our market power finding, we need not determine whether the proposed transaction is limited in scope.

Under 49 U.S.C. 10502(g), we may not use our exemption authority to relieve a carrier of its statutory obligation to protect the interests of its employees. Accordingly, as a condition to granting this exemption, we will impose the employee protective conditions set forth in Oregon Short Line R. Co.—Abandonment—Goshen, 360 I.C.C. 91 (1979).

⁴ There is no overhead traffic.

⁵ RJCP estimates that the net liquidation value of the line segments (excluding land) is approximately \$788,000.

RJCP has submitted an environmental report with its petition and has notified the appropriate Federal, state, and local government agencies of the opportunity to submit information concerning the energy and environmental impacts of the proposed abandonment. See 49 CFR 1105.11. Our Section of Environmental Analysis (SEA) has examined the environmental report, verified its data, and analyzed the probable effects of the proposed action on the quality of the human environment. SEA served an environmental assessment (EA) on February 12, 2001, and requested comments.

The EA included a recommendation that three environmental conditions be imposed on the abandonment. The first condition recommended by SEA addresses the concern by the U.S. Department of Commerce, National Geodetic Survey (NGS), that the proposed abandonment may affect 31 geodetic station markers and requires that RJCP provide NGS with at least 90 days' notification prior to the undertaking of any salvage operations expected to destroy or disturb these markers. The second condition recommended by SEA is in response to the advice of the U.S. Department of Agriculture, Natural Resources Conservation Service (NRCS) that any changes to the railbed or to the support structures (including, but not limited to, culverts, swales, and drainage ditches) may affect surface water quality, and thus impact agricultural lands. Therefore, SEA recommends that RJCP consult with NRCS, prior to salvaging the line, about salvage practices and activities that may impact agricultural land. The third condition recommended by SEA is based upon consultation with the Pennsylvania Department of Environmental Protection (PA-DEP). RJCP has stated its intention to leave in place all stream crossing structures, for which it must obtain a permit under PA-DEP regulations. Thus, SEA recommends that RJCP consult with PA-DEP specifically about regulations for leaving stream crossing structures in place. No comments were filed in response to the EA.

We will impose the conditions recommended by SEA. Based on SEA's recommendation, we conclude that the proposed abandonment, if implemented in accordance with SEA's three conditions, will not significantly affect either the quality of the human environment or the conservation of energy resources.

As noted, DCNR/Fund and CCRTA request that interim trail use/rail banking be imposed under the Trails Act. Each has submitted a statement of willingness to assume financial responsibility for the right-of-way, and has acknowledged that use of the right-of-way is subject to possible future reconstruction and reactivation of the right-of-way for rail service as required under 49 CFR 1152.29. RJCP agrees to negotiate with CCRTA.⁶ Because CCRTA's request complies with the requirements of 49 CFR 1152.29 and RJCP is willing to enter into negotiations, we will issue a NITU. The parties may negotiate an agreement during the 180-day period

⁶ RJCP acknowledges receipt of notice of separate trail use requests filed by CCRTA and DCNR/Fund. RJCP states that, by agreement among the potential trail users, CCRTA will take the lead in negotiating with RJCP. Therefore, RJCP agrees to negotiate trail use only with CCRTA.

prescribed below. If an agreement is executed, no further Board action is necessary. If no agreement is reached within 180 days, RJCP may fully abandon the line, subject to the conditions imposed below. See 49 CFR 1152.29(d)(1). Use of the right-of-way for trail purposes is subject to restoration for railroad purposes.

SEA has indicated in its EA that the right-of-way may be suitable for other public use following abandonment. DCNR/Fund and CCRTA also request that a 180-day public use condition be imposed, precluding RJCP from: (1) disposing of the corridor, other than the tracks, ties, and signal equipment; and (2) removing or destroying potential trail-related structures, such as bridges, trestles, culverts, and tunnels. They state that the subject rail corridor would make an excellent recreational trail and would be consistent with community purposes. They seek a 180-day period because of the need to conduct negotiations with the carrier.

We have determined that persons who file under the Trails Act may also file for public use under 49 U.S.C. 10905. See Rail Abandonments—Use of Rights-of-Way as Trails, 2 I.C.C.2d 591, 609 (1986) (Trails). When the need for both conditions is established, it is our policy to impose them concurrently, subject to the execution of a trail use agreement. DCNR/Fund and CCRTA have met the public use criteria prescribed at 49 CFR 1152.28(a)(2) by specifying: (1) the condition sought; (2) the public importance of the condition; (3) the period of time for which the condition would be effective; and (4) justification for the period of time requested. Accordingly, a 180-day public use condition also will be imposed, commencing from the effective date of this decision and notice. If a trail use agreement is reached on a portion of the right-of-way, RJCP must keep the remaining right-of-way intact for the remainder of the 180-day period to permit public use negotiations. Also, we note that a public use condition is not imposed for the benefit of any one potential purchaser. Rather, it provides an opportunity for any interested persons to acquire a right-of-way that has been found suitable for public purposes, including trail use. Therefore, with respect to the public use condition, RJCP is not required to deal exclusively with DCNR/Fund or CCRTA but may engage in negotiations with other interested persons.

The parties should note that the operation of the trail use procedures could be delayed, or even foreclosed, by the financial assistance process under 49 U.S.C. 10904. As stated in Trails, 2 I.C.C.2d at 608, offers of financial assistance (OFA) to acquire rail lines for continued rail service or to subsidize rail operations take priority over interim trail use/rail banking and public use. Accordingly, if an OFA is timely filed under 49 CFR 1152.27(c)(1) for purchase or subsidy of the line segments, the effective date of this decision and notice will be postponed beyond the effective date indicated here. See 49 CFR 1152.27(e)(2). In addition, the effective date may be further postponed at later stages in the OFA process. See 49 CFR 1152.27(f). Finally, if any line segment(s) is sold under the OFA procedures, the petition for abandonment exemption will be dismissed as to the designated segment(s) and trail use precluded. Alternatively, if a sale under the OFA procedures does not occur, trail use may proceed.

It is ordered:

1. Under 49 U.S.C. 10502, we exempt from the prior approval requirements of 49 U.S.C. 10903 the abandonment by RJCP of the above-described rail line segments, subject to the employee protective conditions set forth in Oregon Short Line R. Co.—Abandonment—Goshen, 360 I.C.C. 91 (1979), the terms and conditions for implementing interim trail use/rail banking set forth below, and the following conditions: (1) RJCP shall leave intact all of the right-of-way, including bridges, trestles, culverts, and tunnels (but not track and track materials), for a period of 180 days from the effective date of this decision and notice, to enable any state or local government agency or other interested person to negotiate the acquisition of the line for public use; (2) RJCP shall notify NGS not less than 90 days prior to the commencement of salvage operations that are expected to destroy or disturb any geodetic station markers; (3) RJCP shall consult with NRCS, prior to the initiation of any salvage activities, specifically about salvage practice and activities that may impact agricultural lands; and (4) RJCP shall consult with, and obtain a permit from, PA-DEP to leave stream crossing structures in place after abandonment, in accordance with PA-DEP regulations.

2. RJCP is directed to serve a copy of this decision and notice on Power Operating and Douglas Explosives within 5 days after the service date of this decision and notice and certify to the Board that it has done so.

3. If an interim trail use/rail banking agreement is reached, it must require the trail user to assume, for the term of the agreement, full responsibility for management of, any legal liability arising out of the transfer or use of (unless the user is immune from liability, in which case it need only indemnify the railroad against any potential liability), and for the payment of any and all taxes that may be levied or assessed against, the right-of-way.

4. Interim trail use/rail banking is subject to the future restoration of rail service and to the user's continuing to meet the financial obligations for the right-of-way.

5. If interim trail use is implemented and subsequently the user intends to terminate trail use, it must send the Board a copy of this decision and notice and request that it be vacated on a specified date.

6. If an agreement for interim trail use/rail banking is reached by the 180th day after service of this decision and notice, interim trail use may be implemented. If no agreement is reached by that time, RJCP may abandon the line, provided the conditions imposed above are met.

7. An OFA under 49 CFR 1152.27(c)(1)⁷ to allow rail service to continue must be received by the railroad and the Board by April 13, 2001, subject to time extensions authorized under 49 CFR 1152.27(c)(1)(i)(C). The offeror must comply with 49 U.S.C. 10904 and 49 CFR 1152.27(c)(1). Each OFA must be accompanied by the filing fee, which is currently set at \$1,000. See 49 CFR 1002.2(f)(25).

8. OFAs and related correspondence to the Board must refer to this proceeding. The following notation must be typed in bold face on the lower left-hand corner of the envelope: **“Office of Proceedings, AB-OFA.”**

9. Provided no OFA has been received, this exemption will be effective May 3, 2001. Petitions to stay must be filed by April 18, 2001, and petitions to reopen must be filed by April 30, 2001.

10. Pursuant to the provisions of 49 CFR 1152.29(e)(2), RJCP shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the line. If consummation has not been effected by RJCP's filing of a notice of consummation by April 3, 2002, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire. If a legal or regulatory barrier to consummation exists at the end of the 1-year period, the notice of consummation must be filed not later than 60 days after satisfaction, expiration, or removal of the legal or regulatory barrier.

By the Board, Chairman Morgan, Vice Chairman Clyburn, and Commissioner Burkes.

Vernon A. Williams
Secretary

⁷ See Abandonment and Discontinuance of Rail Lines and Rail Transportation Under 49 U.S.C. 10903, STB Ex Parte No. 537 (STB served Dec. 24, 1996, and June 27, 1997).